

**BOARD OF APPEALS CASE NO. 5251**

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**BEFORE THE**

**APPLICANTS: Mr. & Mrs. Larry Berger**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct a sunroom  
within the required rear yard setback;  
128 Regent Drive, Bel Air**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

**HEARING DATE: June 5, 2002**

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**Aegis: 5/8/02 & 5/15/02**

**Record: 5/10/02 & 5/17/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Mr. and Mrs. Larry Berger, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to construct a sunroom within the required forty (40) foot rear yard setback in an R2/Urban Residential District.

The subject property is located at 128 Regent Drive, Bel Air, Maryland 21014, in the Third Election District, and is more particularly identified on Tax Map 49, Grid 4C, Parcel 811, Lot 173. The parcel contains 0.29 acres more or less.

The Co-Applicant, Jeffrey Hoilman, appeared, and testified that he is the contractor retained by the Applicants to construct the sunroom. Mr. Hoilman testified that the Applicants, Mr. and Mrs. Larry Berger, are the owners of the subject property. Mr. Hoilman stated that he has read the Department of Planning and Zoning's Staff Report, and that he has no changes or corrections to that information contained in that report. The witness described the subject property as a square shaped, unusually short lot, with a 40 foot front yard setback that leaves no room for additions to be constructed on the rear of the home. The property is improved by a single-family home with an attached two-car garage, a concrete driveway, and a wooden deck attached to the rear of the property. The proposed sunroom would be built in the area where the existing deck is currently located.

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Mr. Hoilman introduced into evidence Applicants' Exhibit 1, a drawing of the proposed sunroom. He testified that as indicated on that drawing, the sunroom will be 18 feet wide with four windows across the front. There are two projected side walls. The wall on the left side will also be all windows, and there will be two windows located on the right side of the sunroom.

The witness then testified regarding the site plan, which is identified as Attachment 3 to the Department of Planning and Zoning's Staff Report. According to the witness, the existing dwelling is shown in the center of the lot. The proposed sunroom will be located toward the southeast corner of the lot, and will be attached to the existing dwelling. The setbacks from the proposed sunroom are shown on the site plan. The two side setbacks are in compliance with the Harford County Code, however, the setback from the rear wall of the proposed sunroom to the rear property line will be only 27 feet if the requested variance is granted. This would result in a 13 foot encroachment into the rear yard setback.

The witness testified that he does not believe that the granting of the requested variance will have any adverse impact on neighboring properties. There are similar sunrooms located in the neighborhood, and the proposed sunroom is compatible with other properties in the neighborhood.

The Department of Planning and Zoning recommended approval of the subject request its Staff Report dated May 22, 2002, stating that;

"The Department finds that the property is unique. The property is zoned R2/Urban Residential District, which would allow a 35 foot front yard setback. The property was zoned R1 when the preliminary plans were approved and the lot was recorded with a 40 foot front yard setback as required at that time. The house was placed 42 feet from the front property line. There is a substantial change in the elevation between the subject lot and the lots adjacent to the rear. Given the location of the homes on the adjacent lots and the existing vegetation, the reduced setback should not impact those lots."

The Staff Report describes the topography of the property as rolling, with a level section in the area of the dwelling. The lot slopes sharply upward toward the rear property line. The rear of the lot is screened from adjoining property by a row of very tall evergreen trees.

No witness appeared in opposition to the requested variance.

**CONCLUSION:**

The Applicants, Mr. and Mrs. Larry Berger, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to construct a sunroom within the required forty (40) foot rear yard setback in an R2/Urban Residential District. The proposed addition would reduce the rear yard setback from 40 feet to 27 feet, resulting in a 13 foot encroachment into the rear yard setback area. Harford County Code Section 267-36B, Table V: Design Requirements for Specific Usage in an R2/Urban Residential District, provides for a minimum 40 foot rear yard depth.

Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two-prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the Hearing Examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

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The Hearing Examiner finds that the subject property is unique. The lot is an unusually short, square shaped parcel, with a forty foot front yard setback. The existing dwelling was placed 42 feet back from the front property line. The placement of the home on the lot leaves no room for constructing an addition on the rear of the house. In addition, the topography is rolling, and levels out in the area of the dwelling, only to slope up sharply near the rear property line. There is a row of 40 - 50 foot tall evergreen trees across the rear of the property, which screens it from view of the adjoining rear lot. Thus, the first prong of the Cromwell test has been met.

Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unusual hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because the proposed location is the only practical place on the property where a sunroom can be constructed. If the requested variance is not granted, the Applicants will be unable to construct a sunroom on the rear of their property, and will therefore be denied property rights commonly enjoyed by other homeowners in the West Riding subdivision.

Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of the Code or the public interest. There are other homes in the West Riding neighborhood with similar attached rear sunrooms. In addition, the sunroom has been designed to be compatible with other property in the neighborhood.

The Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setback than the distance requested herein.

Date: JUNE 14, 2002

Rebecca A. Bryant  
Zoning Hearing Examiner